

WHY IS THE INTERNATIONAL JUSTICE SYSTEM INEFFECTIVE AT PROTECTING THE RIGHTS OF CHILD SOLDIERS?

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Abstract:

A number of international legal instruments, adopted, signed and ratified, to protect the rights of children, represent a framework for how “justice” is determined legally (Mehigan, Walters and Westmarland, 2010). Employing content and discourse analysis, and adopting a cultural relative stance, this article examines the centrality of the concept of power to understanding how children are affected differentially by “justice”. Critiques of the Universal Declaration of Human Rights (United Nations, undated) and the Convention of the Rights of the Child (United Nations General Assembly, 1989), will be followed by a critical assessment of The Impact of Armed Conflict on Children (Machel, 1996). The success of the international justice system in respect of childrens’ rights will be assessed by focusing on two pertinent international solutions, namely the disarmament, demobilisation and reintegration programme and the International Criminal Court.

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A number of international legal instruments, adopted, signed and ratified, to protect the rights of children, represent a framework for how “justice” is determined legally (Mehigan, Walters and Westmarland, 2010). In order to address the question above, I shall be adopting a cultural relative stance to critique human rights frameworks and policy. Employing content and discourse analysis, I shall examine the centrality of the concept of power to understanding how children are affected differentially by these documents. I will also contemplate whether the politics of research has influenced this paper. Other concepts, including the relationship between the local and the global, will be studied to uncover why the international justice system is ineffective at protecting the rights of child soldiers.

To begin with, I shall review literature relevant to child soldiers, and follow it with critiques of the Universal Declaration of Human Rights (UDHR) (United Nations, undated) and the Convention of the Rights of the Child (CRC) (United Nations General Assembly, 1989). Both these documents form the basis of an international justice system in respect of children rights. They are central to the discussion below, and relevant to the critical assessment of *The Impact of Armed Conflict on Children* (Machel, 1996). This is a crucial policy paper that states and non-state parties use as a guide for children affected by armed conflict.

My critical assessment will address the following questions:-

Who are child soldiers?

Why are child soldiers recruited?

How do child soldiers perceive themselves and how do the local and international communities perceive child soldiers?

How does the international community deal with and prevent the recruitment of child soldiers?

The success of the international justice system in respect of childrens’ rights will be assessed by focusing on two pertinent international solutions, namely the disarmament, demobilisation and reintegration (DDR) programme and the International Criminal Court (ICC).

Literature Review

The literature agrees with the CRC (United Nations General Assembly, 1989) that persons younger than 18 years old are children, although Gallagher (2001) argues that childhood is a social construction. Reports estimate that there are approximately 300,000 child soldiers, comprised of those who carry weapons and those who perform support functions (e.g. Machel, 1996). The politics of research hinders any more accurate measurement, as commanders and governments prefer not to disclose true figures for child soldiers (MacVeigh, J., Maguire, S. and Wedge, J., 2007). Children often undergo initiation ceremonies and are treated as adults (Gallagher, 2001).

Evidence suggests that armed state, and non-state, forces recruit child soldiers forcibly because they obey orders more readily (e.g. Rakisits, 2008). A proliferation of light and inexpensive weapons means that children can also buy and use them more readily (e.g. Hick, 2001). Recruiters also take advantage of non-existent or poor national birth

registration systems (e.g. Machel, 1996). Hick (2001) claims that globalisation instigates conflicts and Vautravers (2008) adds that child soldiers are also recruited for ideological reasons. Children also “voluntarily” join these armies, sometimes with the tacit approval of their community and parents, because of poverty and lack of opportunities, and because military life appears attractive (e.g. Machel, 1996). How children are recruited affects their perception of themselves, and how local and international communities perceive them (e.g. MacVeigh, J. et al., 2007)

The international community has used a variety of legal instruments to protect child soldiers, from the adoption of the ICC statute to a range of sanctions and Security Council resolutions (e.g. Vautravers, 2008). Besides these gestures, the international community provides on the ground assistance, including through UN-sponsored DDR programmes. The accompanying literature expresses differing opinions about its success thus far, whilst some authors (e.g. Hick, 2001) suggest that DDR programmes should not be prioritised above promoting sustainable development.

The UDHR (undated), Power and Cultural relativity

The UDHR came into force in 1948 (Mehigan, Walters and Westmarland, 2010). Drafted by government representatives, mainly from the victorious, more powerful Western nations, the brutality of World War II and the associated atrocities inform the UDHR. However, there were only 51 recognised nation states that signed this document; Africa, and swathes of Asia were not yet independent and remained under colonial rule.

The UDHR (United Nations, undated) claims to be universal. However, 6 of the 30 Articles within it specifically refer to ‘he’, ‘his’ and ‘himself’. None refer to the female equivalent. Consequently, males are seen as the dominant, active members of society. Additionally, Articles 23 & 25 specifically refer to ‘his family’. This relates to the burgeoning “welfare states” in the West who were delivering security to their populations in 1948. Articles 23 & 25 therefore reflect dominant Western views of men as breadwinners and women as their dependents. These perceptions are culturally relative, as they are not informed by the views of any African nation; it implies that ‘he’, ‘his’ and ‘himself’ is white. In effect, it distinguishes the rights of women and “non-white” people as being separate issues. Thus, the founding instrument of international justice does not apply universally, but is culturally relative to the rights of those who held power at that time.

The CRC (1989), Power and Cultural Relativity

Premised on Articles 16 and 25 of the UDHR (United Nations, undated), the CRC (United Nations General Assembly, 1989) too was drafted largely by representatives from Western governments to ensure that children’s rights are recognised and protected globally. 191/193 countries have ratified the CRC (1989) to date (Hick, 2001).

For the international community, Article 1 states that a child is anyone under the age of 18 years, unless under national law the age of majority is reached earlier (United Nations General Assembly, 1989). Hence, the international community acknowledges that nations may recognise children as adults, despite the CRC (1989) definition of childhood. The international construction of childhood becomes more blurred when viewed against Article

38, which states that children under the age of 15 years should not be recruited or take direct part in hostilities. No explanation accompanies this re-construction of childhood, although it is worth noting that powerful Western nations have consistently opposed legislation to raise the age of recruitment into their armed forces. This demonstrates the social construction of childhood at the local and global levels, and reveals that not only is it culturally relative, but that it can be re-interpreted by powerful nations to suit their own priorities.

The preamble refers to the importance of traditions and cultural values as important in the protection and development of children (United Nations General Assembly, 1989). Yet this is often overlooked; Article 24(3) which refers to the abolition of traditional practices that are harmful to children. Traditional practices are not defined, and it is assumed from a Western perspective, that they refer to practices, such as female circumcision, employed elsewhere, rather than targeting Western traditions, such as the recruitment of children into state armies. Thus, it particularly singles out the relationship between the less powerful nations and their children as requiring monitoring.

Finally, Article 43 institutes the rights of a committee, consisting of “ten experts of high moral standing” (CRC, p. 12, United Nations General Assembly, 1989) to establish its own rules of procedure to realise the CRC. Nominated by each nation, it is evident that states parties will not nominate citizens who do not reflect their interests. Therefore, power and culturally relative Western ideas of morality are inherent in the CRC (1989).

The Machel Report (1996) - A Critical Assessment

Who are child soldiers?

Machel (1996) used the CRC (United Nations General Assembly, 1989) as the framework for her report. By using the CRC (as an actor) to formulate new policy, instead of other international legal instruments, its use re-emphasises its importance. Children are anyone under the age of 18 years, although paragraph 231 acknowledges that the CRC (1989) needs strengthening in terms of re-defining the age of child soldiers. This reflects the faultline upon which this document runs; the international community seem unable to agree on what age children are. MacVeigh, J. et al. (2007) refer to an UNICEF report that states that some DDR programmes were helping individuals under 25 years old.

The same paragraph asks governments to take their moral commitments seriously and to stop using children in armed conflict (Machel, 1996). This report was supported by a number of Western UN-sponsored agencies with backgrounds in charitable work founded on Christian notions. As with the CRC (1989), Western, religious ideas of morals and morality appear regularly. In the introduction, ideas of morality are allied to the words child and children extensively. This constitutes an attempt to visualise children as being those who are innocent and in need of protection, rather than youths or teenagers. It also re-asserts the power of the West to define who requires keeping an eye out for, and who needs keeping an eye on.

Vautravers (2008) notes that the UK recruits approximately 40% of its forces between the

age of 16-17 years. Gallagher (2001) argues that childhood is socially constructed, and that it should be understood within the context of a society's history and culture. He refers to the traditional practices of Poro societies of West Africa, and the meaning that this might have in terms of child soldiers in Sierra Leone. This society is seen as being the font of political power and knowledge. Large numbers of children are abducted and initiated into Poro society every 5-15 years. After initiation, children are seen as adults and warriors no matter their physical age. Gallagher (2001) argues that the rebel forces in Sierra Leone initiated children against this cultural backdrop so that children could exact meaning from their experience. Critics of Gallagher do not contend this point. At a local level, although each nation is able to contend the universality of childhood, it is only the more powerful who can reconstruct this notion. Child soldiers are therefore a culturally relative construct.

The context in which conflicts take place needs equal consideration. Vautravers (2008) notes that over 40% of the population of sub-Saharan Africa are under 15 years old and that over 50% of these countries have life expectancies of less than 50 years. In comparison with Western life expectancies of around 70 years, it would equate 15 year olds in Africa being 21 years old in Western terms. Hick (2001) adds that a number of households in Africa are headed by children due to the impact of AIDS. Therefore, the local and regional situation is such that children might arguably be regarded as adults at an earlier age.

An universal threshold of what constitutes childhood is a blurred notion. As noted above, Articles contained within the CRC (United Nations General Assembly, 1989) make this abundantly clear, as does the evidence from other authors. Such a rigid framework makes it difficult to adequately deal with the rights of child soldiers. Moreover, it ignores the rights of soldiers who were children during a conflict, yet have now passed the age of 18 years. Neither the CRC (1989) nor Machel (1996) offer any information or guidance for dealing with them, even though in the West they may be considered to have had their childhood stolen from them.

Why are child soldiers recruited?

According to Machel (1996), children are mainly recruited because certain nation states have improper birth registration procedures, if at all, and because of a lack of other inadequate institutional services that cater to children. She also cites hunger and poverty as drivers for recruitment, as well as noting that military life is may be attractive because of the glory associated with it.

Articles 18 & 28 of the CRC only make provisions for states to provide appropriate assistance and services to caregivers (United Nations General Assembly, 1989). In other words, it recognises the inability of all states to provide full assistance at a global level. The less powerful nations with less resources to spend are the targets of this report and the CRC (1989), yet equally they are not obliged to fulfil their commitments at a local level. Herein lies the problem of relying on the CRC (1989) as a framework, as it reveals the unsure foundations upon which children's rights are based. For this reason, this report, and the international justice system, can not provide solutions that protect the rights of child soldiers.

Other reasons why children might be recruited into armed forces are raised by STK (MacVeigh, J. et al., 2007). They point to girls enlisting due to domestic violence in their communities, as well as other children who are abandoned or forced out of their homes by their parents. This impacts upon DDR programmes, as the children want to avoid reintegration for fear of people finding out why they joined. By disregarding these childrens' problems, Machel misses out a key component of her plan to assist.

How do child soldiers perceive themselves and how do the local and international communities perceive child soldiers?

There is scant information or evidence relating to the perception of child soldiers in Machel's (1996) report. In context of explaining why military glory and power lead children to join armed forces, paragraph 42 refers to a meeting with child soldiers who proudly told her of the number of people that they had killed. It is unclear whether the children were in rehabilitation programmes at the time of their meeting, or whether she spoke to them separately or in a group. The problem with such limited evidence, is that information like this may have the effect of socially constructing the children as being pathologically 'like this', as well as creating negative visions of the places which they come from. Machel's position of power as the author of this report may hinder the effectiveness of international responses to childrens' rights.

In respect of children initiated into Poro societies, Gallagher (2001) thinks that their local communities perceive them as adults, as children are fearful of returning to them because they will be punished like adults. Goetz (2006) too reports that children often see themselves as heroes, although local communities differ in their perceptions of them. Some see them as victims only if they are younger and not gone through cultural rites of passage, such as those discussed above. Whilst humanitarian agencies habitually view those who have been abducted as victims, Gallagher (2001) notes that not all in the international community share this feeling, describing a Lebanese Christian Commander telling a Doctor from Medecins Sans Frontieres that he did not view child soldiers as children whose rights should be advocated.

For girls, things are worse. STK (MacVeigh, J. et al., 2007) point out that girls sometimes return to their communities with children. This affects their perception of themselves and their communities' perception of them. In these situations, girls prefer not to return to school for fear of being stigmatised, and also because they want to be recognised as women in their own rite.

The above evidence demonstrates how people construct childhood and child soldiers differently at a local and global level. It is consistent with a culturally relative perspective. Accordingly, the perceptions of child soldiers are issues that Machel (1996) should have considered in her report, as they alter the dynamics of it. Correspondingly, they affect how the international justice system might better protect childrens' rights as they are pertinent to the success or failures of the international justice system.

In the following sections, I will deal with the measures that the international community

has adopted to protect child soldiers' rights and assess their merits and faults.

How does the international community deal with and prevent the recruitment of child soldiers?

DDR Programmes

DDR programmes are a key feature in the international community's response to child soldiers. Education and vocational training are used as means of ensuring that children become fully-fledged members of civil society, as well as preventing their re-recruitment (Machel, 1996). She points to the power of education and its ability to arm children with negotiating and problem solving skills, and the power of future employment, via vocational training, to provide the child and any dependents with the economic security that they need.

Such efforts take place within communities into which child soldiers have been reintegrated. Her report fails to address any community responses to this international solution (Machel, 1996). The methodology acknowledges that she has consulted with a number of relevant individuals and bodies, but she does not specify whether the "eminent leaders from civil society" (Machel, p. 7, 1996) are the community members who have an integral part to play in the success or failure of DDR programmes. Given that Article 39 of the CRC (United Nations General Assembly, 1989) states that reintegration take place in a place that fosters a healthy environment for children, and Machel's own insistence that children be reintegrated into their own communities, it appears that the perceptions of child soldiers, as addressed above, might hamper the success of DDR programmes. Thus, action at local levels have a direct impact on the global level.

How successful are DDR programmes?

Machel (2000) fails to assess the success of DDR programmes in her following report, although she is aware that some fail. She attributes these failings to flawed design, monitoring or due to a lack of funds, and reiterates how a successful DDR programme works. Nevertheless, such a dearth of information on its progress does not augur well. In 'Stolen Futures', MacVeigh, J. et al. (2007) point to progress in other areas, but again fail to qualify the success or not of DDR programmes. As a powerful partner in the project, STK may not wish to imply failure. Again, this hints at the politics of research and how much they feel that they can divulge due to their ongoing relationship with the international community. Instead, they indicate that success should be decided by children and their caregivers.

MacVeigh, J. et al., (2007) point to some problems with children reintegrating into their communities, and the resentment and stigmatisation that they face, and acknowledge that such problems may have existed before the conflict. This harks back to the lack of relevance given to the potential discrimination that child soldiers might face. Of equal importance, STK note problems with providing vocational training when training in particular fields may not meet the needs of the market. Machel (1996) also seems to have ignored the need for there to be jobs at a national level to ensure that vocational training works. Again, the relevance of the local situation has been overlooked by the global demand.

Continuity of conflicts has also been identified as a key factor related to the success and failure of DDR programmes. Vautravers (2008) claims that 1/3 of all ongoing conflicts (as at the date of his article) were more than 30 years old. This suggests that the premise of DDR programmes may be flawed given its inability to secure stability. Rakisits (2008) reckons that DDR programmes should be expanded as those excluded from it frequently cause unrest, and refers to an STK Director who was unable to return demobilised children because of ongoing conflict.

Moreover, because of the displacement that conflicts cause, Hick (2001) and Goetz (2006) state that camps for internally displaced persons (IDPs), into which some children reintegrate, are more harmful than beneficial. Hick (2001) believes that they should be used only as a last resort, as the camps are close to conflict areas with no form of protection, leaving children vulnerable to re-recruitment.

The above suggests that DDR programmes are not adequately protecting the rights of child soldiers. Whilst some children may benefit from education and vocational training, many are not due to political and economic insecurity. The purported reasons for prioritising such programmes without dealing with the underlying problems within society serve only to undermine the efforts that they are making. Both child soldiers and programme providers are left powerless at a local level, despite the underlying global power of the human rights framework.

The ICC

Machel (1996) supported the creation of the ICC. This is despite earlier references to the importance of restorative justice systems, and relative successes of Truth and Reconciliation Commissions. The ICC represents a form of justice that is being forced upon the less powerful nations and individuals. More powerful nations and individuals are not subject to its reach, including the USA which has imposed a number of 'impunity agreements' on countries who are economically dependent on them, to protect government officials from being brought before the ICC (Mehigan, Walters and Westmarland, 2010). Predicated on a culturally relevant UDHR (undated), and based upon the power imbalance between nations, the ICC can not be considered universal. It therefore lacks the potential to achieve 'justice' for child soldiers.

For Machel (2000), the likelihood of the establishment of the ICC represented a success in itself; its statute deals with the enlistment or use of child soldiers as a war crime. She considered that its immediate forerunners, notably the international criminal tribunals for the Former Yugoslavia and Rwanda, set historic precedents that saw sexual violence in armed conflict being prosecuted. As a result, she considered that the ICC had the potential to go further. That said, she failed to provide any evidence that might suggest how successful these prosecutions were. Worse still, these prosecutions represented just 0.0004% of the estimated number of victims of sexual violence. It is also important to note that Machel only thought that the ICC had the potential to fulfill her hopes.

The separation of issues between those of crimes against child soldiers and gender related

crimes is mirrored in Machel's 1996 report. By rendering these matters as different, those who read it may perceive them as either being unconnected or less of an issue than those committed against child soldiers.

How successful is the ICC?

'Child Soldiers before the ICC' offers some insight (Goetz, 2006). They suggest that the ICC has contributed to improved security and peace in Northern Uganda. However, local attitudes towards the ICC reflect the power of the West to impose their forms of justice. Following the arrest of a prominent rebel leader in the Democratic Republic of Congo, there was some local suspicion of the "white men" (Goetz, p. 22, 2006). Children involved in trials expressed similar lack of confidence in what is a remote and foreign court. These expressions suggest that local cultures view the ICC as both a tool of power used by the more powerful, and reflect the cultural relativity of the ICC and UDHR (undated) as being based on the rights of the 'white man'.

Despite Machel's aspirations that the ICC would render sexual violence committed during armed conflict as war crimes, Goetz (2006) notes that such crimes have not been used to deal with the treatment of children associated with armed forces. Furthermore, MacVeigh, J. et al. (2007) report that international peacekeepers have been accused of sexual violence, yet these allegations are rarely acted upon. This depressing evidence suggests that girls', and some boys', rights are routinely being ignored and they suffer further harm at the hands of ineffectual powers that be.

Based on the sparse evidence thus far, it would appear that the ICC has achieved partial success. However, this evidence is provided by a party that advocates human rights issues, whilst other evidence indicates that there is still a long way to go before one might consider the ICC a success. Based on inequitable power relations and the cultural relativity of the court, I have concerns that it will ever attain the hopes that it affords.

Conclusion

International justice for all is based on the UDHR (undated). The rights of child soldiers are based on the CRC (1989). Machel's report on armed conflicts and its impact on children is framed by the CRC (1989). From the very first article, which allows for national law to subsume it, the age of childhood is a matter of some dispute (United Nations General Assembly, 1989). It is a confused document that claims children are under the age of 18, yet simultaneously states that child soldiers are no older than 15. Moreover, childrens' rights are not rights in a full sense, but when state parties consider it appropriate that they are. The power of nations to redefine what childhood is and what childrens' rights might be means that they can not be universal. In turn, the international justice system can not apply childrens' rights equitably to all, and particularly to child soldiers.

By adhering to the CRC (1989) framework rigidly, Machel's (1996) search for justice for children affected by armed conflict, has omitted pivotal information. Despite the length of many ongoing conflicts, both she, and other sources, failed to gather any evidence from those over the age of 18. A lack of local community leaders' voices appears to be another oversight, and there is little evidence from any child soldiers, despite their alleged

centrality to the report. Her own position, as the author of a crucial report on children's rights is powerful, and the tone and language used indicates that less powerful nations are being targeted to be held accountable for their supposed (in)action on children rights. Powerful nations seem to escape any suggestions that they are responsible for the abuse of children rights, thereby creating further negative impressions at a local level.

From a cultural relative perspective, the effect of power can be seen in the relative failings of the DDR programme and the ICC to date. The alleged power of education and vocational training from a Western perspective fails to deliver the promise of stability that the international justice system seeks. As a result, underlying tensions are ignored which leads to further harms being inflicted upon children and child soldiers. The scope of the ICC is allegedly universal, but when nations and individuals are easily able to avoid its grasp, it renders it symbolic rather than a powerful mechanism for dealing with international justice issues. That the ICC has failed to date to deal with cases of sexual abuse committed against child soldiers speaks only confirms this.

For these reasons, the international justice system has failed to protect the rights of child soldiers, and the framework upon which it is based is ineffective at securing these rights.

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